

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Comments Sought on the Technological Transitions  
of the Nation's Communications Infrastructure

GN Docket No. 12-353

AT&T Petition to Launch a Proceeding Concerning  
the TDM-to-IP Transition

Petition of the National Telecommunications  
Cooperative Association for a Rulemaking to  
Promote and Sustain the Ongoing TDM-to-IP  
Evolution

Connect America Fund

WC Docket No. 10-90

A National Broadband Plan for Our Future

GN Docket No. 09-51

Establishing Just and Reasonable Rates for Local  
Exchange Carriers

WC Docket No. 07-135

Developing an Unified Intercarrier Compensation  
Regime

CC Docket No. 01-92

**COMMENTS OF  
THE MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts  
Department of Telecommunications and Cable

GEOFFREY G. WHY, COMMISSIONER

1000 Washington Street, Suite 820  
Boston, MA 02118-6500  
(617) 305-3580

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The Massachusetts Department of Telecommunications and Cable (MDTC)<sup>1</sup> respectfully submits these comments in response to the Public Notice released by the Federal Communications Commission (FCC) on December 14, 2012.<sup>2</sup> In the Public Notice, the FCC establishes a pleading cycle on a petition filed by AT&T on November 7, 2012 (AT&T Petition)<sup>3</sup>

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<sup>1</sup> The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16. Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

<sup>2</sup> See *Pleading Cycle Established on AT&T and NTCA Petitions*, GN Docket 12-353, FCC Public Notice, DA 12-1999 at 1 (rel. Dec. 14, 2012) (Pleading Cycle Public Notice).

<sup>3</sup> *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353 (filed Nov. 7, 2012) (AT&T Petition).

and a petition filed by the National Telecommunications Cooperative Association (NTCA) on November 19, 2012 (NTCA Petition).<sup>4</sup>

## **I. SUMMARY**

AT&T urges the FCC to make sweeping policy changes in response to the ongoing technological transition from circuit-switched networks and services.<sup>5</sup> The MDTC encourages the FCC to consider prudently the appropriate regulatory framework to accompany the ongoing technological transition to IP-based networks and services while protecting all stakeholders, including industry, businesses big and small, and consumers. Numerous questions concerning the regulatory landscape for IP-based networks and services persist and the proposed trials requested by AT&T<sup>6</sup> are too narrowly tailored to achieve a successful transition to IP-based networks and services as detailed in the National Broadband Plan.<sup>7</sup>

Chairman Genachowski recently stated, “technology transitions don’t change the basic mission of the FCC.”<sup>8</sup> As the FCC updates the relevant regulatory framework, it should be mindful of how its regulations and any changes affect *all* stakeholders, including industry, businesses, and consumers. Specifically, as IP-based networks and services are implemented and individual carriers move to discontinue circuit-switched networks and services, the FCC must fully consider how the existing regulatory landscape currently serves and how it will

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<sup>4</sup> In the Matter of Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353 (filed Nov. 19, 2012) (NTCA Petition).

<sup>5</sup> AT&T Petition at 4-7.

<sup>6</sup> AT&T Petition at 1.

<sup>7</sup> See *Connecting America: The National Broadband Plan* at 59 (Mar. 2010) available at <http://www.broadband.gov/plan/> (National Broadband Plan).

<sup>8</sup> See FCC News Release, “FCC Chairman Julius Genachowski Announces Formation of Technology Transition Policy Task Force” (rel. Dec. 10, 2012) available at <http://www.fcc.gov/document/fcc-chairman-announces-technology-transitions-policy-task-force> (last viewed Jan. 9, 2013).

continue to fulfill the FCC's mission to advance public safety, protect consumers, promote competition, and ensure a reliable universal network.<sup>9</sup>

## **II. THE TRANSITION TO IP-BASED NETWORKS AND SERVICES REQUIRES PRUDENT FCC CONSIDERATION OF THE REGULATORY LANDSCAPE AND HOW TO CONTINUE TO ADVANCE PUBLIC SAFETY, PROTECT CONSUMERS, PROMOTE COMPETITION, AND ENSURE A RELIABLE UNIVERSAL NETWORK.**

On January 22, 2012, tens of thousands of AT&T U-verse customers, across multiple states, experienced an outage to their services.<sup>10</sup> A faulty software upgrade deprived these consumers of their access to the communications networks.<sup>11</sup> Depending upon their subscription, these customers were without phone, internet, and television for up to three days.<sup>12</sup> The FCC's ability to respond to and investigate this type of outage depends upon the regulations applicable to the network and services.<sup>13</sup> AT&T's proposal is to eliminate existing regulations hindering the FCC's ability to address the public safety, consumer, and network reliability issues that such an outage poses.<sup>14</sup> The FCC should not adopt such an approach. As service providers transition to IP-based networks and services, the FCC must preserve its current authority until, after prudent investigation and consideration, it knows how best to continue to advance public safety, protect consumers, promote competition, and ensure a reliable universal network.

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<sup>9</sup> See 47 U.S.C. § 151.

<sup>10</sup> Brian X. Chen, *AT&T's TV, Phone and Internet Service is Down in Some States*, New York Times, Jan 23, 2012, <http://bits.blogs.nytimes.com/2013/01/23/atts-tv-phone-and-internet-service-is-down-in-some-states/>.

<sup>11</sup> *Id.* See also, AT&T U-verse Twitter Account, <https://twitter.com/Uverse> (AT&T first claimed a server problem caused the outage).

<sup>12</sup> Brian X. Chen, *AT&T Says U-verse Failure is Almost Over*, New York Times, Jan. 24, 2012, <http://bits.blogs.nytimes.com/2013/01/24/att-says-u-verse-outage-is-almost-over/>

<sup>13</sup> See e.g. 47 C.F.R. Pt. 4; *In the Matter of The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Report and Order, FCC 12-22 (rel. Feb. 21, 2012) (VoIP Outage Reporting Order) (FCC Order extending outage reporting requirement to interconnected VoIP service providers).

<sup>14</sup> AT&T Petition at 6-7.

**A. The Transition of Public Safety Networks from Circuit-switched to IP-based Networks is a Model for the Transition of all Networks and Services.**

Public safety is one of the FCC's core functions and "promoting safety of life and property" is a foundational reason for the creation of the FCC.<sup>15</sup> The MDTC has previously stressed to the FCC that in the transition to IP-based networks, "[e]xisting public safety communications infrastructure, primarily the 911/E-911 system, relies substantially on legacy network architecture."<sup>16</sup> The impact on 911 service is a mission-critical consideration in the IP transition discussion. The FCC reinforced this idea in the recent Text-to-911 rulemaking proceeding -- "voice 911 service will continue to be central and essential to the 911 system even as [the FCC] add[s] text, photo, data, and video capabilities in the course of migrating the NG911."<sup>17</sup> This corresponds with past findings of the FCC's Public Safety and Homeland Security Bureau (PSHSB) that:

A number of the public safety answering points (PSAPs) or 911 call centers that handle 911 calls still lack broadband connectivity to a service provider network, which is necessary to support the evolution to NG911. Providing this connectivity on a nationwide scale will require substantial funding.<sup>18</sup>

and

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<sup>15</sup> VoIP Outage Reporting Order at ¶ 4.

<sup>16</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, MDTC Ex Parte Comments (filed May 4, 2012) at 7 (MDTC ICC Ex Parte).

<sup>17</sup> *In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Further Notice of Proposed Rulemaking, FCC 12-149 at ¶ 8 (rel. Dec. 13, 2012) (Text-to-911 FNPRM).

<sup>18</sup> See Public Safety and Homeland Security Bureau White Paper, *A Next Generation 911 Cost Study: A Basis for Public Funding Essential to Bringing a Nationwide Next Generation 911 Network to America's Communications Users and First Responders* (Sept. 2011) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-309744A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309744A1.pdf).

When a wireless or VoIP user places a 911 call on a legacy network, the service provider handles the call with a complex system of routing, re-routing, and look-up designed to emulate the legacy technology.<sup>19</sup>

The PSHSB's findings in the January 2013 *Derecho Report and Recommendations* (Derecho Report) is a stark reminder of the need for a public safety network that is maintained at a high standard, and a balanced approach to technological transition that does not sacrifice the reliability of the existing network on the promise of innovation.<sup>20</sup> In the Derecho Report, the PSHSB found communications networks suffered failures because many providers without attendant regulations failed to implement voluntary and crucial best practices.<sup>21</sup> Network failures occurred because of “avoidable planning and system failures.”<sup>22</sup> It bears noting: regulations do not exist to burden providers. Rather, they exist because those charged with ensuring communications network continuity need to ensure that providers comply with best practices, so that the public has access to emergency services.<sup>23</sup>

AT&T could point to the Derecho Report as support for its proposal to remove regulations to further the transition to IP-based networks. However, the benefit of NG911 will mean little if providers fail to meet the basic expectations for network reliability and the FCC does not give itself the tools to monitor compliance with best practices, identify risks, and require basic maintenance and corrections. Eliminating regulations undermines reliability and confidence in the emergency communications

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<sup>19</sup> *Id.*; MDTC ICC Ex Parte Comments at 8.

<sup>20</sup> See Public Safety and Homeland Security Bureau, *Impact of the June 2012 Derecho on Communications Networks and Services, Report and Recommendations* (Jan. 2013) available at <http://www.fcc.gov/document/derecho-report-and-recommendations> (Derecho Report).

<sup>21</sup> *Id.* at 11, 41.

<sup>22</sup> *Id.* at 1 (emphasis added).

<sup>23</sup> See, *Id.* at 39-40 (The PSHSB recognizes this importance in its recommendations for possible FCC actions).

network during the transition. Severe storms do not wait for providers to finish building new networks.<sup>24</sup>

In its National Broadband Plan, the FCC recognized that Broadband will play a vital role in the future of public safety, but only if communications networks are held to high standards of reliability, resiliency and security.<sup>25</sup> The National Broadband Plan contains public safety recommendations to promote public safety wireless broadband communication, promote cybersecurity and the protection of critical broadband infrastructure, and encourage innovation in the development and deployment of NG911 networks and emergency alert systems.<sup>26</sup> The FCC has multiple on-going proceedings to plan the development and implementation of these goals.<sup>27</sup> In developing and implementing changes to develop, protect, and advance an IP-based public safety network, the FCC has recognized and adhered to its “responsibility to ensure continuous operations and reconstitution of critical communications services.”<sup>28</sup> This balanced approach gives the FCC, Congress, and states the opportunity to review and seek input on current public safety laws and regulations without jeopardizing the public’s ability to reach first responders or the ability of first responders to communicate and respond to emergencies.

The FCC’s balanced approach for transitioning public safety regulations as networks and services are transitioned to IP-based networks and services is the approach the FCC should utilize for transitioning all regulations. The FCC needs to consider the

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<sup>24</sup> *Id.* at 14 (in the five months following the Derecho, Hurricane Isaac struck the Gulf Coast, and Superstorm Sandy struck the Eastern Seaboard).

<sup>25</sup> National Broadband Plan at 313.

<sup>26</sup> *Id.* at 313-314.

<sup>27</sup> *See, e.g.*, Text-to 911 FNPRM; VoIP Outage Reporting Order.

<sup>28</sup> VoIP Outage Reporting Order at ¶ 7.



appropriate regulatory landscape for the next generation communications network. The FCC in considering revising or eliminating public safety regulation must be cognizant of harmful gaps in the telecommunications infrastructure that could result. AT&T's proposal,<sup>29</sup> would not allow the FCC to continue its balanced approach as it will eliminate large segments of regulations in geographically-limited trials to be followed by a case-by-case review to determine whether to reinstitute the eliminated regulation.

Notably, AT&T's Petition does not address how its proposed trial could affect the public safety network or public safety services. AT&T proposes to eliminate “‘telephone company’ regulations that may require carriers to maintain legacy TDM-based networks and services even after replacement services are in place.”<sup>30</sup> Unaddressed is the effect shutting down a portion of the circuit-switched network would have on the public safety communications infrastructure or services.<sup>31</sup> Public safety concerns such as this could be addressed in ILEC test proposal plans, and its omission by AT&T underscores the need for the FCC to follow the approach now being utilized in the transition of public safety services. The potential risks to networks and services from eliminated regulations are significant. The FCC should conduct a more strategic and prudent evaluation of the regulatory landscape by preserving regulations that work and are still needed.

**B. Consumer Protections Regulations are Designed to Protect Consumers using Any Underlying Technologies.**

A central premise of AT&T's proposal is that IP-based networks and services are not and should not be subject to existing regulations that apply to service providers utilizing legacy

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<sup>29</sup> AT&T Petition at 20-21.

<sup>30</sup> *Id.* at 21.

<sup>31</sup> In contrast, the Section 214 approval to discontinue service requirement that AT&T seeks to eliminate, would likely entail such an evaluation, where the FCC and states consider whether the present or future public convenience and necessity will be adversely affected. *See 47 U.S.C. § 214.*

TDM-based networks.<sup>32</sup> Rather than revise regulations to meet changes in markets and regulations, while adhering to the FCC mission--which could occur today--AT&T proposes a clean-slate approach, eliminating regulations for all providers.<sup>33</sup> DTC has serious concerns that AT&T's plan would eliminate all consumer protection regulations at the state and federal level.<sup>34</sup>

Specific to AT&T's proposal, MDTC is concerned with consumer protection regulations that derive their authority primarily from Title II of the Communications Act of 1934, as amended (Act) such as protections from slamming and cramming,<sup>35</sup> and consumer privacy regulations.<sup>36</sup> AT&T wants to exempt ILECs from well-established responsibilities;<sup>37</sup> eliminate regulations that it claims prevent carriers from retiring legacy networks; such as federal and state service obligations;<sup>38</sup> and finalize the proceeding classifying IP-enabled services as information services<sup>39</sup> to completely prohibit the application of common carrier (Title II) regulations to communications networks and services. As previously stated, AT&T's proposal is to remove the regulations and add regulations back as determined necessary.<sup>40</sup> Regulations protecting consumers need to be preserved.

Consumer protections are regulations that guide the relationship between service providers and customers. They are enacted to ensure that consumers are informed about service offerings and associated charges,<sup>41</sup> that information consumers must provide for service are

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<sup>32</sup> AT&T Petition at 18.

<sup>33</sup> *Id.* at 11.

<sup>34</sup> AT&T Petition at 15-17.

<sup>35</sup> *See* 47 C.F.R. § 64.2400 *et seq.*

<sup>36</sup> *See, e.g.* 47 C.F.R. § 64.1600 *et seq.*

<sup>37</sup> AT&T Petition at 10-11.

<sup>38</sup> *Id.* at 15-16.

<sup>39</sup> *Id.* at 18.

<sup>40</sup> *Id.* at 21-22.

<sup>41</sup> *See e.g.* 47 C.F.R. § 64.2400 *et seq.*

protected,<sup>42</sup> that consumers have equal, non-discriminatory access to such services,<sup>43</sup> and that consumers know how to inquire about or raise disputes concerning the cost and provision of services.<sup>44</sup> As an example, the FCC's Truth-in-Billing Regulation requires, among other things, that telephone bills are clearly organized, contain brief, clear, non-misleading, plain language description of services rendered, and clearly and conspicuously disclose contact information for the provider of a billed service.<sup>45</sup> This regulation applies to common carriers providing telecommunications service, but has nothing to do with the underlying technology.<sup>46</sup> Rather, its purpose is to inform consumers and help them make informed decisions about services and service providers.<sup>47</sup> Such regulations are not only extendable to any service providers, but are not unique to the provision of communications services.<sup>48</sup>

As AT&T's proposed trial concerns a transition in technology it is unlikely that their proposed trial would produce any useful data concerning the continued need for consumer protection regulations. For example, it is unlikely that any ILEC conducting a trial would amend its current billing practices to be inconsistent with Truth-in-Billing requirements, even if the FCC eliminated the regulation. ILECs deciding not to change their billing practices though are not evidence that the regulation is unnecessary, rather it merely indicates that ILECs are aware of the regulation's requirements and decided not to undertake less burdensome billing practices during the trial. Should the FCC decide to review the continued need for consumer protection regulation regardless of the underlying technology, the Commission should consider opening a

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<sup>42</sup> See e.g. 47 C.F.R. § 64.2001 *et seq.*

<sup>43</sup> See e.g. 47 C.F.R. § 6.1 *et seq.*

<sup>44</sup> See e.g. 47 C.F.R. § 64.2401.

<sup>45</sup> See 47 C.F.R. § 64.2401.

<sup>46</sup> See 47 C.F.R. § 64.2400(a) ("These rules are also intended to aid customers in understanding their telecommunications bills, and provide them with the tools they need to make informed choices in the market for telecommunications service.")

<sup>47</sup> *Id.*

<sup>48</sup> See e.g. Truth in Lending (Regulation Z) Regulations, 12 C.F.R. pt. 226 *et seq.*

narrow proceeding where it would solely review consumer protection regulations. In its review, the Commission could receive comments on the purpose behind each protection, the effect or success of each protection, whether a protection should be reformed,<sup>49</sup> and the continued state role in protecting consumers including the enforcement of its own regulations, receiving consumer complaints, providing consumer education, and mediating consumer disputes.

### **C. The FCC Must Balance Updating Competition Policy with Furthering the Transition to IP-based Networks and Services.**

According to AT&T, ILECs face a competitive disadvantage where they must maintain circuit-switched networks and offer circuit-switched services.<sup>50</sup> AT&T believes that the solution is the removal of regulations that it claims impede the retirement of TDM-based facilities and services.<sup>51</sup> However, commenters on AT&T's Petition assert that it is updating the Commission's interconnection and last mile policies that are essential to facilitating the transition to IP-based networks and services.<sup>52</sup> The MDTC submits that before the FCC can allow

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<sup>49</sup> Consideration of whether to reform a regulation should include whether it should be eliminate, whether it should be re-worded to apply to IP-based networks or services, and the legal authority of the Commission to expand the regulation if it is determined necessary.

<sup>50</sup> *Id.* at 4-5.

<sup>51</sup> *Id.* at 6.

<sup>52</sup> Cbeyond, Inc., Earthlink Inc., Integra Telecom, Inc., and tw telecom, inc., *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Petition of US Telecom for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Requirements*, WC Docket No. 12-61; *Petition of CenturyLink for Forbearance Pursuant to 47 U.S.C. § 160(c) from Dominant Carrier and Certain Computer Inquiry Requirements on Enterprise Broadband Services*, WC Docket No. 12-60; *Petition of tw telecom inc. et al. to Establish Regulatory Parity in the Provision of Non-TDM-Based Broadband Transmission Services*, WC Docket No. 11-188; *Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-in-the-Middle Voice Services*, WC Docket No. 11-119; *Business Broadband Marketplace*, WC Docket No. 10-188; *Framework for Broadband Internet Service*, GN Docket No. 10-127; *Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act*, WC Docket No. 09-223; *Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act*, WC Docket No. 09-222; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137; *Policies and Rules*

complete transition to IP-based networks and services, it should resolve competition-related issues identified in the National Broadband Plan.<sup>53</sup> This is necessary so that businesses remain competitive without having to undertake the inefficient need to build duplicative facilities.<sup>54</sup>

The National Broadband Plan included five recommendations for competition in wholesale broadband markets that need further development before completing the transition to IP-based networks and services.<sup>55</sup> The recommendations include developing and acting on an effective analytical framework for wholesale access competition policies;<sup>56</sup> just and reasonable special access rates, terms and conditions;<sup>57</sup> clarifying interconnection rights and obligations particularly IP-to-IP interconnection,<sup>58</sup> data roaming,<sup>59</sup> and perhaps most immediately pertinent, ensuring appropriate balance in copper retirement policies.<sup>60</sup>

Commenters to AT&T Petition have noted that there are ongoing FCC proceedings dealing with the very issues that AT&T now wants a new proceeding to address.<sup>61</sup> Indeed,

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*Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *IP-Enabled Services*, WC Docket No. 04-36; *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-23, *Ex Parte*, at 4 (filed Dec. 4, 2012) (Willkie Farr Ex Parte).

<sup>53</sup> See National Broadband Plan at 48-49.

<sup>54</sup> *Id.* at 47 (“[b]ecause of the economies of scale, scope and density that characterize telecommunications network, well functioning wholesale markets can help foster retail competition, as it is not economically or practically feasible for competitors to build facilities in all geographic areas”).

<sup>55</sup> See Recommendations 4.7 – 4.11, National Broadband Plan at 48-49.

<sup>56</sup> Recommendation 4.7, National Broadband Plan at 48.

<sup>57</sup> Recommendation 4.8, National Broadband Plan at 48.

<sup>58</sup> Recommendation 4.10, National Broadband Plan at 49.

<sup>59</sup> Recommendation 4.11, National Broadband Plan at 49.

<sup>60</sup> Recommendation 4.9, National Broadband Plan at 48.

<sup>61</sup> Willkie Farr Ex Parte; NASUCA, New Jersey Division of Rate Counsel, *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket 96-45; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208; *IP Enabled Services*, WC Docket No. 04-36; *Appropriate Frame for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-23; *Framework for Broadband Internet Service*, GN Docket No 10-127; *Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services*, WC Docket No. 11-119; *Petition of US Telecom for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy*

AT&T's Petition is simply a proposal concerning the FCC's copper retirement policies.<sup>62</sup> The FCC should combine consideration of AT&T's Petition with other ongoing FCC proceedings concerning its copper retirement policies to achieve the most effective and beneficial result for all stakeholders instead of one or two companies that would benefit at the expense of others in the industry, businesses, and consumers. The copper retirement issues should also be considered in tandem with reviews of current regulations and the development of the regulatory framework for the IP-based networks and services as recommended in the National Broadband Plan.<sup>63</sup>

**D. The FCC Should Maintain and Continue Reforming Universal Service Requirements during the Transition to IP-based Networks and Services.**

AT&T suggests that existing regulations hinder investment in new or upgraded IP-based networks at the margins.<sup>64</sup> AT&T would eliminate needed universal service obligations, such as eligible telecommunications carrier (ETC) obligations and carrier-of-last-resort (COLR) requirements mandating ILECs to serve every household in their service territories.<sup>65</sup> AT&T proposes that the FCC use its waiver and forbearance powers to limit the applicability of these existing regulations.<sup>66</sup> AT&T, however, recognizes the existence of regulatory procedures available to provide ILECs regulatory relief, but claims those procedures are lengthy, onerous, and piecemeal.<sup>67</sup> The FCC should be skeptical of such claims. One of the FCC's "central

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*Telecommunications Requirements*, WC Docket No. 12-61; *Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act*, WC Docket No. 09-223; *Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act*, WC Docket No. 09-222; *Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, BridgeCom International, et al., Petition for Rulemaking and Clarification (filed Jan. 18, 2007)* ("BridgeCom Petition"); *Petition of XO Communications, LLC, et al., For a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Cooper Loops and Copper Subloops, RM-11358*.

<sup>62</sup> AT&T Petition at 1.

<sup>63</sup> Recommendation 4.7, National Broadband Plan at 48.

<sup>64</sup> AT&T Petition at 5.

<sup>65</sup> *Id.* at 10, 16.

<sup>66</sup> *Id.* at 22.

<sup>67</sup> *Id.* at 11.

missions is to make ‘available ... *to all the people of the United States* ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.’”<sup>68</sup> The FCC has maintained an essential partnership with the states to administer the universal service program to ensure that the most expensive to serve, the most rural, and the insular communities receive service.<sup>69</sup>

Further, the FCC has already started reforming its universal service regulations, recognizing that “[n]etwork that provide only voice service ... are no longer adequate for the country’s communication needs.”<sup>70</sup> This reform is an ongoing process, and it would be premature for the FCC to eliminate regulations even for limited trial purposes, as AT&T proposes, while the FCC reviews the process and develops new methods of providing support for universal services.<sup>71</sup> As a part of its reform, the FCC has not sought to modify existing state authority to establish and monitor COLR obligations.<sup>72</sup> The MDTC affirms its position that states, which have the experience and the processes in place, should, if COLR obligations need to be reassessed, make those determinations.<sup>73</sup>

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<sup>68</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 at ¶ 2, (rel. Nov. 18, 2011) (CAF/ICC Order and FNPRM) (emphasis added).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See e.g. CAF/ICC Order and FNPRM.

<sup>72</sup> CAF/ICC Order and FNPRM at ¶ 15.

<sup>73</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208, MDTC Initial CAF Comments at 31 (filed Jan. 18, 2012) (MDTC Initial CAF Comments).

**E. The FCC has Guidelines and a Task Force to Implement the Transition to IP-based Networks and Services.**

In its Petition, AT&T expresses confidence that the FCC will continue to implement the recommendations of the National Broadband Plan, which includes the transition to IP-based network and services.<sup>74</sup> AT&T seeks to repackage the IP transition process and move the transition to IP-based networks and services through trials that it claims will encourage investment and deployment of IP-based infrastructure through the elimination of existing legacy regulations that burden incumbents.<sup>75</sup> AT&T's proposal, however, falls short of encompassing the actions recommended in the National Broadband Plan and, as a consequence, the FCC should not implement AT&T's proposed trials. As envisioned under the National Broadband Plan, the FCC should consider that:

As with earlier transitions, the transition from a circuit-switched network will take a number of years. But to ensure that the transition does not dramatically disrupt communications or make it difficult to achieve certain public policy goals, the country should start considering the necessary elements of this transition in parallel with efforts to accelerate broadband deployment and adoption.<sup>76</sup>

To facilitate the transition without disrupting communications or the fulfillment of the FCC's mission the FCC should:

start a proceeding on the transition that asks for comment on a number of questions, including whether the FCC should set a timeline for a transition and, if so, what the timeline should be, quality of service requirements and safeguarding emergency communications. This proceeding should consider questions of jurisdiction, regulatory structure and legacy voice-specific regulations, including interconnection, numbering and carrier of last resort obligations. It should consider the impact of the transition on employment in the communications industry, particularly given the historic role of the sector in providing high-skill, high-wage jobs. In the proceeding, the FCC should also look at whether there are requirements from other federal entities, such as tax requirements, that would affect the path of the transition.<sup>77</sup>

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<sup>74</sup> AT&T Petition at 3-4.

<sup>75</sup> *Id.* at 1.

<sup>76</sup> National Broadband Plan at 59.

<sup>77</sup> *Id.*



The National Broadband Plan has a clear recommendation of the scope of proceeding the FCC should initiate for the transition to IP-based networks. The recently created Technology Transitions Policy Task Force is coordinating this effort.<sup>78</sup> An extensive record is also being developed at the FCC on many of the issues raised in the National Broadband Plan in multiple open proceeding<sup>79</sup> and through the FCC's advisory committees.<sup>80</sup> The FCC does not need to initiate another proceeding to conduct vague trials as AT&T recommends; rather, the FCC and its Technology Transition Task Force should consider the issues raised in the AT&T Petition in the context of the broader issues affecting the technology transition.

### III. CONCLUSION

The transition from circuit-switched networks and services to IP-based networks and services is not the first technological transition in communications, and it is likely not the last.<sup>81</sup> The transition concerns all aspects of the FCC's mission.<sup>82</sup> AT&T's Petition has continued the FCC's on-going review of the IP-based transition, but its Petition should not frame the FCC's transition process. The FCC should decline to act on the AT&T Petition and continue its review of the existing regulatory landscape and within its existing proceedings and through the actions of the Technology Transition Task Force consider how to advance public safety, protect consumers, promote competition, and ensure a reliable universal network during and after the transition to IP-based networks and services.

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<sup>78</sup> FCC News Release, "FCC Chairman Julius Genachowski Announces Formation of Technology Transition Policy Task Force" (rel. Dec. 10, 2012) *available at* <http://www.fcc.gov/document/fcc-chairman-announces-technology-transitions-policy-task-force> (last viewed Jan. 9, 2013).

<sup>79</sup> *Supra* note 61.

<sup>80</sup> See FCC Encyclopedia Page, "Advisory Committees of the FCC," *available at* <http://www.fcc.gov/encyclopedia/advisory-committees-fcc> (last viewed Jan. 9, 2013).

<sup>81</sup> National Broadband Plan at 59.

<sup>82</sup> *Id.*

Respectfully submitted,

GEOFFREY G. WHY, COMMISSIONER

By: /s/ Michael Scott

Paul Abbott, General Counsel  
Karlen Reed, Competition Director  
Kalun Lee, Deputy General Counsel  
Michael Scott, Attorney

Massachusetts Department of  
Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500  
Phone: 617-305-3580  
michael.scott2@state.ma.us

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